

§ 42.11

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the ALJ shall withdraw the initial decision in paragraph (c) of this section, if the decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 42.38 of this part.

(h) The defendant may appeal to the Secretary the decision denying a motion to reopen by filing a notice of appeal with the Secretary within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the Secretary decides the issue.

(i) If the defendant files a timely notice of appeal with the Secretary, the ALJ shall forward the record of the proceeding to the Secretary.

(j) The Secretary shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the ALJ.

(k) If the Secretary decides that extraordinary circumstances excuse the defendant's failure to file a timely answer, the Secretary shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(l) If the Secretary decides that the defendant's failure to file a timely answer is not excused, the Secretary shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

§ 42.11 Referral of complaint and answer to the Administrative Law Judge (ALJ).

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

§ 42.12 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 42.8 of this part. At the

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same time, the ALJ shall send a copy of such notice to the representative for the Government.

(b) The notice shall include—

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the Government and the defendant, if any; and

(6) Other matters the ALJ deems appropriate.

§ 42.13 Parties to the hearing.

(a) The parties to the hearing shall be the defendant and the Department of Veterans Affairs.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

§ 42.14 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of the Department of Veterans Affairs who takes part in investigating, preparing, or presenting a particular case may not, in the case or a factually related case—

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the Secretary, except as a witness or a representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ shall not be responsible to, or subject to, the supervision or direction of the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the Government may be employed anywhere in the Department of Veterans Affairs, including in the offices of either the investigating official or the reviewing official.